

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ISMAIL MEGHANI and U.S. POSTAL SERVICE,
POST OFFICE, New York, NY

*Docket No. 98-1533; Submitted on the Record;
Issued April 12, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability on May 18, 1993 causally related to his December 4, 1992 employment injury.

The Board has duly reviewed the case on appeal and finds that appellant failed to meet his burden of proof in establishing that he sustained a recurrence of disability on May 18, 1993 causally related to his December 4, 1992 employment injury.

This case has previously been before the Board on appeal. In its May 2, 1997 decision,¹ the Board found that appellant had submitted sufficient medical evidence to require additional development by the Office of Workers' Compensation Programs. The Board reviewed the August 16, 1993 and January 4, 1994 reports from Dr. Frederick U. Metcalf, a licensed clinical neuropsychologist, who diagnosed postconcussion syndrome causally related to the December 4, 1992 employment injury and indicated that appellant was totally disabled due to this condition. The Board found these reports were not sufficiently well rationalized to meet appellant's burden of proof, but found that the reports did raise an uncontroverted inference of causal relationship and were sufficient to require further development of the medical evidence. The facts and circumstances of the case as set out in the Board's prior decision are adopted herein by reference.

Following the Board's May 2, 1997 decision, the Office referred appellant for a second opinion evaluation. By decision dated March 27, 1998, the Office denied appellant's claim finding that he failed to meet his burden of proof in establishing a recurrence of disability on or after May 18, 1993.

¹ Docket No. 94-2420.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his recurrence of disability commencing May 18, 1993 and his December 4, 1992 employment injury.² This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.³

In his November 6, 1997 report, Dr. Neil S. Rosenthal, a Board-certified neurologist, noted appellant's history of injury, and reviewed both the statement of accepted facts and the medical records. He performed physical and neurological evaluations. Dr. Rosenthal stated that he could detect no objective findings in support of any statement of subjective complaints or work-related injuries. He noted several inconsistencies in appellant's physical testing and reviewed the initial medical evaluation. Dr. Rosenthal stated, "Although he may have initially had some degree of head trauma in this work-related accident, by his own admission the trauma did not result in any loss of consciousness or fall..." Dr. Rosenthal stated, "Whatever may have been the initial extent of this alleged head trauma, at this point in time from a neurological point of view, I do not detect any objective evidence of neurological disability, nor do I see a need for any further treatment or surgery related to his alleged work-related accident." In the work restriction evaluation, Dr. Rosenthal indicated that appellant could function at the same level as prior to the 1982 employment injury. He concluded, "The December 4, 1992 accident did not, in my opinion, result in any neurological impairment from which he needed to improve."

The Board finds that the weight of the medical evidence rests with the detailed and well-rationalized report of Dr. Rosenthal, a Board-certified neurologist. He reviewed the relevant medical records, the statement of accepted facts and provided detailed findings regarding appellant's physical and neurological conditions, including evidence of symptom exaggeration. Dr. Rosenthal concluded, based on his findings and history of injury, that appellant did not sustain a neurological condition as a result of his employment injury and did not therefore sustain a recurrence of disability due to this injury on or after May 1993.⁴

² *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

³ *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁴ Appellant submitted additional new evidence following the Office's March 27, 1998 decision. As the Office did not consider this evidence in reaching a final decision, the Board will not review it for the first time on appeal. 20 C.F.R. § 501.2(c).

The May 27, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
April 12, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member